Committee, at the time of making a statement in the Court. Again, the petitioner—workman had summoned the records relating to his posting and stay in the Market Committee, Amritsar, before he was transferred to Rayya in the year 1976. That record was also not brought by W.W. 2 Suraj Bhan, while appearing before the Labour Court. On the other hand, in para 8 of the award, the learned Labour Court has made some observations based on personal experience in the following words :—

> "My experience shows that the functioning of Market Committee, Amritsar, is highly irregular and chances of collusion between officials working in the Market Committee and the workman litigating in Courts, cannot be ruled out."

There was neither any necessity nor any occasion or basis for making such observations. Equally without any force is the conclusion arrived at by the learned Labour Court that since the notice of demand was not issued by the workman earlier than 15th June, 1978, his conduct "supports considerably the version of the Management that this gentleman was never appointed by the Management nor did he actually serve for it at any time."

(5) Consequently, the writ petition is allowed, the impugned award dated 12th June, 1986 (Annexure P-10), is hereby set aside and the case is remitted back for fresh decision on the reference made to the Labour Court, Amritsar, in accordance with law. The parties, who are present through their counsel, have been directed to appear before the Labour Court, Amritsar, on 26th October, 1987. There shall be no order as to costs.

R. N. R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

RAJ PAUL OSWAL,—*Applicant.*

versus

COMMISSIONER OF WEALTH TAX, PATIALA,—*Respondent.*

Wealth Tax Reference Nos. 17 *and* 18 *of* 1978.

October 1, 1987.

Wealth Tax Act (XXVII of 1957)—*Sections* 16-*A* (1) (*a*) *and* (*b*)—*Wealth Tax Rules*, 1957—*Rules* 3*B*—*Assessment of true value of assets—Estimated value more than returned value—Reference to Valuation Officer by the Wealth Tax Officer—Whether mandatory.*

Wealth Tax Act (XXVII of 1957)—Sections 16-A(1)—Word 'may' used in Section 16A(1)—interpretation of—Whether should be read as 'shall'.

Held, that Section 16-A(b) of the Wealth Tax Act, 1957 read with Rule 3-B of the Wealth Tax Rules, 19 mandatorily requires the Wealth Tax Officer to make a reference. The Wealth Tax Officer is not required to convey his estimated value to the assessee and wait for his reaction. The moment the estimated value exceeds the returned value of the asset by more than what is envisaged by rule 3-B then he has no option but to make a reference and he is not required to wait for a request from the assessee to make a reference.

(Para 14).

Held, that the legislative intent had been to accord total discretion to the Wealth Tax Officer to make a reference to the Valuation Officer or not in cases covered by clauses (a) and (b) of sub-section (1) of Section 16-A of the Wealth Tax 1957 then there was no necessity of providing the guidelines in clause (a) or in sub-clauses (i) and (ii) of clause (b) of sub-section (1) of Section 16-A of the Act. The Legislature by prescribing the contingencies, in which by implication it would not be necessary to make a reference also again by necessary implication be taken to have intended that the reference to Valuation Officer was a must if the contingencies did not exist. Hence it has to be held that the expression 'may' used in Section 16-A(1) of the Act, must be read as 'shall' as the provision vests no discretion in the Wealth Tax Officer regarding reference to the Valuation Officer to ascertain the true value of the asset.

(Paras 8 and 11).

Sharbati Devi Jhalani *vs.* Commissioner of Wealth Tax, Delhi-VII, and others (1986) 159 I.T.R. 549.

(*Dissented from*)

Reference under Section 27(1) *of the Wealth Tax Act,* 1957 *preferred by the Income-Tax Appellate Tribunal Amritsar Bench for seeking the opinion of the High Court in the following question of law arising out of W.T.A. Nos.* 194 *and* 195 *(ASR)* 1976-77 *for the Assessment year* 1971-72 *and* 1972-73. *R.A. Nos.* 110 *and* 111 *(ASR)* 1977-78.

> "*Whether under the facts and circumstances of the case, the Tribunal was justified in holding that reference to valuation officer by the Wealth-tax Officer under Section* 16-*A of the Wealth-tax Act,* 1957 *was discretionary and not mandatory, even when difference in wealth returned by the assessee and wealth assessed by the wealth-tax Officer was more than the limit prescribed under rule* 3-*B of the Wealth tax Rules* ?"

B. S. Gupta, Senior Advocate, (Sanjay Bansal and Suresh Kumar Advocates with him), *for the Petitioner.*

Ashok Bhan, Senior Advocate A. K. Mittal, Advocate with him *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) The Income Tax Appellate Tribunal, Amritsar Branch, referred the following question for the opinion of this Court :—

"Whether under the facts and circumstances of the case, the Tribunal was justified in holding that reference to valuation officer by the Wealth Tax Officer under section 16-A of the Wealth Tax Act, 1957 was discretionary and not mandatory, even when difference in wealth returned by the assessee wealth assessed by the Wealth Tax Officer was more than the limit prescribed under rule 3-B of the Wealth Tax Rules ?"

In order to appreciate the import of the question only a reference to the admitted facts is necessary, which can be stated thus :—

The assessment relates to the year 1971-72 (with 31st March, 1972, as the valuation date) and the year 1972-73 (with 31st March, 1973, as the valuation date). The assets involved were one-third share in a house situated at Rani Jhansi Road, and another property situated at Sohan Lal Lane exclusively owned by the assessee. For the former asset, the value returned by the assessee was Rs. 35,000. The Wealth Tax Officer accepted the value of the construction as shown by the assessee. The Wealth Tax Officer assessed the value of the plot area on the basis of Rs. 80 per square yard and consequently estimated the value of 1/3rd share of the assessee at Rs. 82,630.

(2) The property situated in Sohan Lal Lane was a plot and the value returned by the assessee as obtaining on 31st March, 1971, was mentioned as Rs. 1,92,564. The Wealth Tax Officer calculated the value of this plot on the basis of Rs. 80 per square yard,

which came to be Rs. 3,08,160. The Wealth Tax Officer adopted for both the properties the same valuation regarding the subsequent assessment year 1972-73 and imposed the wealth-tax accordingly regarding both the assessment years. The assessee challenged the said order in appeal. The Assistant Commissioner adopting the rate of Rs. 51/ per sq. yd. for the plot of Rani Jhansi Road and Rs. 46 per sq. yd. for the Sohan Lal Lane respectively reduced the estimated value of the two assets. This order satisfied neither side and, therefore, both the Revenue and the assessee approached the Tribunal in appeal against that order. The Tribunal dismissed both the appeals and maintained the *status quo*.

(3) Before proceeding to examine the rival contentions it would be appropriate at this stage to take notice of the relevant statutory provisions :—

Section 16-A of the Wealth-Tax Act, 1957, reads :—

"16A. (1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section under this Act, the Wealth-Tax Officer may refer the valuation of any asset to a Valuation Officer:—

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-Tax Officer is of opinion that the value so returned is less than its fair market value ;

(b) in any other case, if the Wealth-tax officer is of opinion:—

(i) that the fair market value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf ; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

xxx xxx xxx

xxx xxx xxx

(6) On receipt of the order under sub-section (3) or sub-section (5) from the Valuation Officer, the Wealth Tax

Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the valuation Officer."

Rule 3-B of the Wealth-tax Rules of 1957 reads as follows :—

"3B. *Conditions for reference to officers.*—The percentage of the value of the asset as returned and the amount referred to in sub-clause (i) of clause (b) of sub-section (1) of section 16A shall respectively, be 33 1/3 per cent, and Rs. 50,000."

(4) Admittedly, the estimated value of the assets exceeded the returned value of the said assets by more than what is envisaged by rule 3-B, *ibid.* The question, therefore, arises as to whether in that eventuality the Wealth Tax Officer had perforce to make a reference to the Valuation Officer for assessing the true value of the asset.

(5) It has been contended on behalf of the assessee that once the estimated value exceeded the value returned by the assessee by more than what is envisaged in rule 3-B, then the Wealth Tax Officer had no option but to make a reference to the Valuation Officer.

(6) The learned counsel for the assessee sought to buttress the above contention from the view which the Board of revenue itself had taken of the provisions which had been newly introduced by the Taxation Laws (Amendment) Act, 1972, with effect from 1st January, 1973 and conveyed the same to all the Wealth Tax Officers in the country, through a Circular No. 96, dated November 25, 1972 [as reproduced in (1973) 91 I.T.R. 1].

(7) In our opinion the counsel for the assessee is right in his submission. Their Lordships in *K. P. Varghese* v. *Income Tax Officer, Ernakulam and another* (1) had an occasion to consider that aspect of the matter. Their Lordships held that rule of construction by reference to *contemporanea expositio* is a well-established rule for interpreting a statute by reference to the exposition it had received from contemporary authority, though it must give way where the language of the statute was plain and

(1) (1981) 131 I.T.R. 597

unambigous. Their Lordships in this regard approvingly quoted the following lucid observation of *Mookerjee J.*, at page 713 in *Baleshwar Lagarti* v. *Bhagirathi Dass* (2): —

> "It is a well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

Their lordship did not remain content by merely holding that the view expressed by the Board in regard to a given provision of the Act could be of help in interpreting the said provision, but went one step further and basing thernselves on earlier two decisions of that Court in *Navnit Lal C. Javeri* v. *K.K. Sen, AAC* (3) and *Ellerman Lines Ltd.* v. *CII* (4) held that circulars in question were legally binding on the Revenue even if there were found not in accordance with the correct interpretation of the given provision.

(8) It may be observed that if the legislative intent had been to accord total discretion to the Wealth Tax Officer to make a reference to the Valuation Officer or not, in cases which were covered by clause (a) & (b) of sub-section (1) of Section 16A of the Wealth-Tax Act, then there was no necessity of providing the guide-lines in clause (a) or in sub-clauses (i) and (ii) of clause (b) of sub-section (1) of section 16A. The Legislature by prescribing the contingencies, in which, by implication, it would not be necessary to make a reference, also again by necessary implication be taken to have intended that the reference to Valuation Officer was must if the given contingencies did not exist.

(9) It has been canvassed on behalf of the Revenue that use of expression "may" would indicate that the provision regarding reference to the Valuation Officer is directory and not mandatory.

(10) There is no doubt about the fact that the use of expression "may" and "shall" to some extent serves an indicia to the intention of the Legislature and helps in deciding as to whether the

(2) (1908) I.L.R. 35 Cal. 701
(3) (1965) 56 I.T.R. 198
(4) (1971) 82 I.T.R. 913

given requirement is directory or mandatory in character, but the use of expression "may" or "shall" is never considered decisive in that regard.

(11) We may emphasise that if the provision of section 16A of the Wealth Tax Act is to be interpreted as canvassed on behalf of the Revenue that it vests a discretion in the Wealth Tax Officer to make a reference to the Valuation Officer or not even when the case is covered by clause (a) or (b) of sub-section (1) of section 16A of the said Act, then it would invest the provision with the vice of arbitrariness and thus rendering it *ultra vires* the provision of Article 14 of the Constitution of India.

(12) The Courts have to avoid a construction which may render a provision unconstitutional.

Delhi High Court in *Sharbati Devi Jhalani* v. *Commissioner of Wealth-Tax, Delhi-VII,* and others (5) also took the above view. Kirpal, J., who delivered the opinion for the Bench, however, added a rider that the Wealth Tax Officer is required to make a reference mandatorily only if the estimated value after being notified to the assessee was not acceptable and the assessee wanted a reference to be made.

(13) Learned counsel for the Revenue taking a cue from the aforesaid view of Kirpal, J., contended that since the assessee in this case had not requested the Wealth Tax Officer to make a reference, the Wealth Tax Officer was not duty bound to make a reference.

(14) In our view, there is no merit in the stand taken on behalf of the Revenue. In our view provision of section 16A, clause (b), when read with rule 3-B, *ibid* mandatorily requires the Wealth Tax Officer to make a reference. With due respect to Kirpal, J., in our opinion, the Wealth Tax Officer was not required to convey his estimated value to the assessee and wait for his reaction. In our opinion, the moment the estimated value exceeded the returned value of the asset by more than what is envisaged by rule 3-B, then he had no option, but to make a reference and he is not to wait for a request from the assessee to make a reference. It would be different matter if the assessee on coming to

(5) (1986) 159 I.T.R. 549

know about the estimated value whether as a result of the communication from the Wealth Tax Officer or on his own and in writing accepts estimated value to be the correct value.

(15) For the reasons aforementioned, we answer the question referred to us in the negative i.e. against the Revenue and in favour of the assessee and remit the case back to the Tribunal to deal with it in accordance with law.

R. N. R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

SHANTA DEVI,—*Applicant.*

versus

COMMISSIONER OF INCOME TAX,—*Respondent.*

Income Tax Reference No. 53 *of* 1978.

October 5, 1987.

Income Tax Act (XLIII of 1961)—*Sections* 68 *and* 69—*"Books of an assessee"—Meaning of such books—Books of partnership firm—Such books—Whether can be considered to be the books of individual partner.*

Held, that in relation to the expression "books" the emphasis is on the word "assessee". In other words, such books have to be the books of the assessee himself and not of any other assessee. The books of the accounts of the partnership firm herein cannot be considered that of an individual assessee herein and, therefore, Section 68 of the Income Tax Act, 1961 would not be attracted to the present case. (Paras 5 and 7)

Reference under Section 256(1) *of the Income-tax Act,* 1961, *preferred by the Income Tax Appellate Tribunal (Chandigarh Bench) for seeking the opinion of the High Court in the following question of law arising out of I.T.A. No.* 571 *of* 1976-77 *for the Assessment year* 1963-64 *R.A. No.* 5 *of* 1978-79.

Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the books of account of the firm in which the assessee is a partner should be considered to be the assessee's own books of account in terms of section 68 *of the Income-tax Act* 1961 *and thereby confirming the addition of Rs.* 8,400 *found to have been credited in the a/c of the assessee in the books of the firm ?*

Rakesh Kumar Jain, Advocate, *for the Petitioner.*

L. K. Sood, Advocate, *for the Respondent.*